



May 25, 2001

Ms. Elaine S. Hengen
Assistant City attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2001-2162

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147682.

The El Paso Police Department (the “department”) received a request for copies of all police reports on Larry James Harper and George Rivas, to include “the reports on the crimes in which they were serving out time prior to the prison break at the Connally Unit.” You claim that the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

It appears, and you assert, that the requested information relating to Mr. Harper is the same as that addressed in Open Records Letter No. 01-1273 (2001). In the earlier decision, we concluded that some of the information was excepted from public disclosure under section 552.101 of the Government Code in conjunction with common law privacy, as well as under section 552.130.¹ In addition, we found that the requested information contained social security numbers that may be excepted from disclosure under section 552.101. As we understand you to assert the same exceptions to disclosure for the information contained in

¹Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

records pertaining to Mr. Harper as originally asserted in the previous ruling, and based on our understanding that the pertinent circumstances on which the prior ruling was based have not changed, we conclude that you may withhold a portion of the requested information contained in records pertaining to Mr. Harper in accordance with Open Records Letter No. 01-1273 (2001). See Open Records Decision No. 673 at 6 (2001) (describing four required criteria for previous determination where this office has previously issued decision evaluating public availability of precise information or records requested from governmental body).

We next address your arguments for withholding the information pertaining to Mr. Rivas. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor asks for all police reports concerning Mr. Rivas. We therefore believe Mr. Rivas' right to privacy has been implicated. Thus, where the responsive records pertaining to Mr. Rivas identify him as a possible suspect, we conclude that you must withhold this information under common law privacy as encompassed by section 552.101 of the Government Code. See *id.* As we resolve your request relating to the requested information pertaining to Mr. Rivas under section 552.101, we need not address your argument under section 552.130.

To summarize, a portion of the requested information contained in records pertaining to Mr. Harper may be withheld in accordance with this office's prior ruling in Open Records Letter No. 01-1273 (2001). The requested information relating to Mr. Rivas may be withheld in its entirety under section 552.101 in conjunction with common law privacy.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 147682

Encl. Submitted documents

cc: Mr. John Stanley
2401 Turtle Creek Boulevard
Dallas, Texas 75219
(w/o enclosures)